

RECORDATION NO. 5804-A Filed & Recorded

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SUBLEASE OF RAILROAD EQUIPMENT INTERSTATE COMMISSION

SUBLEASE OF RAILROAD EQUIPMENT dated as of October 1, 1970, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a Delaware corporation having its principal office at One Market Street, San Francisco, California (hereinafter called "Sublessor"), and EVERGREEN FREIGHT CAR CORPORATION, a Delaware corporation, having its principal office at 1255 Boylston Street, Boston, Massachusetts (hereinafter called "Sublessee").

WHEREAS, Sublessor desires to lease two hundred sixty-three (263) 70 ton, 50 ft. 6 in. insulated box cars (hereinafter called the "cars") to Sublessee, and Sublessee desires to hire the same from Sublessor, under and pursuant to the terms of this Sublease of Railroad Equipment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. Sublessor hereby subleases the cars unto Sublessee, and Sublessee hereby subleases the cars from Sublessor, at the rental and upon the other terms and conditions hereinafter set forth. This Sublease of Railroad Equipment is subject to all rights of The First Pennsylvania Banking and Trust Company, as Trustee (hereinafter called the "Owner"), and its assigns, under that certain Equipment Trust Agreement dated as of July 1, 1970, and by and between Owner and Sublessor, with respect to Southern Pacific Transportation Company Equipment Trust Series No. 47, in which said cars, together with other railroad equipment, was leased by Owner to Sublessor.

2. This Sublease of Railroad Equipment with respect to each said car shall commence on the date of its delivery to and acceptance by Sublessee and shall continue to and including December 31, 1985. The rental for each said car subject to this Sublease shall commence to accrue and shall be payable by Sublessee to Sublessor as set forth in Section 5 hereinafter.

3. Sublessee agrees that in accepting delivery of the cars for the purposes of this Sublease, the cars conform to the cars described in the aforesaid Equipment Trust Agreement, and are in good order and condition; that the cars bear Sublessee's numbers EFCX 3638 to 3900, both inclusive; that the cars are now, and, at all times while said Equipment Trust Agreement dated as of July 1, 1970, remains in effect, shall continue to be plainly, distinctly, permanently and conspicuously marked by a metal plate or lettering on each side of each car, in letters not less than one inch in height, in accordance with the provisions and requirements of Section 4.06 of said Equipment Trust Agreement; that a duly authorized representative of Sublessee has inspected the cars; and that the cars conform to the requirements of this Sublease. Sublessee further agrees that when Sublessee delivers to Sublessor a Certificate or Certificates of Acceptance of the cars, such Certificate or Certificates of Acceptance shall constitute conclusive evidence that the cars have been delivered to and accepted by Sublessee in accordance with the provisions of this Sublease.

4. Sublessor makes no warranty or representation, either express or implied, as to the fitness, design or condition of,

or as to the quality of the material, equipment or workmanship in, the cars, or as to any patented features thereof or as to Sublessor's property therein, it being agreed that all such risks, as between Sublessor and Sublessee, are to be borne by Sublessee. Sublessor hereby irrevocably appoints and constitutes Sublessee its agent and attorney-in-fact, for and in its name and behalf, to make and enforce, from time to time during the continuance of this Sublease and to the extent of Sublessee's interest hereunder, whatever claim or claims Sublessor may have against the manufacturer of the cars.

5. Sublessee agrees to pay Sublessor the following rental for each said car subject to this Sublease, which rental shall commence to accrue on the first day of the month following delivery of such car to Sublessee hereunder:

- (a) From the said date of initial accrual of rent for such car to and including December 31, 1970, the sum of Ten Dollars and Thirty-Eight Cents (\$10.38) per month for each One Thousand Dollars (\$1,000.00) of the aggregate purchase price of each such car as set forth in the manufacturer's invoice for such car as finally settled for and paid by Sublessor, said rental for such period to be paid by Sublessee to Sublessor on January 1, 1971; and
- (b) For the period commencing January 1, 1971, through December 31, 1985, thirty (30)

semi-annual installments each in the amount of Sixty-Two Dollars and Thirty Cents (\$62.30) per One Thousand Dollars (\$1,000.00) of the aggregate purchase price of each such car as set forth in the manufacturer's invoice for such car as finally settled for and paid by Sublessor, said semi-annual installments to be paid on January 1 and July 1 of each year during such period, commencing on July 1, 1971, and terminating on January 1, 1986.

6. Sublessee shall, during the continuance of this Sublease, in addition to the rental herein provided, promptly pay all taxes, assessments and other governmental charges, imposed upon or in respect of the cars, provided that Sublessee shall not be required to pay the same so long as it shall in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof, unless thereby, in the judgment of Sublessor, the rights or interests of Sublessor will be materially endangered.

7. At all times during the continuance of this Sublease, Sublessee will cause each car to bear the number originally assigned to it as set forth in Section 3 hereof. If during the continuance of this Sublease the markings referred to in Section 3 hereof shall at any time be removed, defaced or destroyed on any car, Sublessee will immediately cause such markings to be restored or replaced at its expense. Sublessee will not allow the name of any person, association or corporation to be placed

on any of the cars as a designation which might be interpreted as indicating a claim of ownership thereof or interest therein by any person, association or corporation other than Owner or Sublessor, but Sublessee may letter the cars with its name or initials or other appropriate insignia for convenience of identification of its subleasehold interest under this Sublease, and may identify said cars in the usual manner by including the name and mark of Southern Pacific Transportation Company.

8. During the continuance of this Sublease, Sublessee, so long as it shall not be in default hereunder, and so long as this Sublease is not terminated, and subject to all terms and conditions of this Sublease, shall be entitled to possession of the cars and the use thereof on lines of railroad in the usual interchange of traffic.

9. Sublessee agrees to indemnify and save harmless Sublessor against any charge or claim against Sublessor, and against any expense or liability which Sublessor may incur in any manner, arising out of or as a result of the use or operation of the cars or any thereof.

10. Sublessee shall comply with all laws and regulations of any state or governmental authority respecting the manner of using the cars, or any thereof, during the continuance of this Sublease.

Sublessee shall pay the entire cost of installing or fastening additional devices or appliances to the cars, and the entire cost of replacement of existing parts with superior parts, the primary aim of which is to make the cars more useful, more efficient, more durable or capable of greater capacity. All

said additional devices or appliances and improvements on the cars are referred to hereinafter, collectively, as "additions and betterments", and they shall be considered as accessions to the cars.

Subject to having first obtained the written consent of Sublessor, Sublessee shall have the right to make any such addition or betterment.

11. Sublessee shall not by virtue of this Sublease or the possession and use of the cars by Sublessee under or pursuant to this Sublease, or of anything permitted to be done by Sublessee hereunder in respect of the cars, acquire title to or any property interest in the cars or any thereof.

12. This Sublease shall continue in full force and effect irrespective of damage to, or destruction of, any of the cars; and Sublessee agrees that during the continuance of this Sublease it will, at its own cost and expense, maintain and keep the cars in as good order and repair as when delivered to it under this Sublease, ordinary wear and tear excepted.

Sublessee shall be obligated to pay Sublessor rental for the cars for the full rental term of this Sublease, on the dates and in the amounts as specified in subparagraphs (a) and (b) of Section 5 hereinabove, irrespective of damage to any of the cars; provided, however, that should any car, during the rental term, be damaged beyond repair, lost, destroyed, worn out, found to be unfit for the purpose constructed, or title thereto be taken by an governmental authority by condemnation, exercise of power of eminent domain, or otherwise (such occurrences being herein-

after called "Casualty Occurrences"), Sublessee shall pay the depreciated value of such car and a penalty thereon as specified hereinbelow. The depreciated value of any such destroyed car shall be deemed to be the original cost thereof less depreciation arising from reasonable wear and tear to be determined by the straight-line method at the rate of $\frac{1}{3}$ of 1% for each calendar month elapsed since the date such destroyed car was first put into use. In addition, Sublessee shall pay Sublessor as consideration for the premature termination of this Sublease with respect to such destroyed car a penalty in the amount of one year's simple interest on the depreciated value thereof at the rate of 9-1/4%. Such payments of depreciated value and penalty shall be made by Sublessee on the semi-annual rental payment date next succeeding the date of the casualty occurrence, and rental on such destroyed car shall continue to and terminate on that date.

This Sublease is a net lease and Sublessee shall not be entitled to any abatement of rent, reduction thereof, or set-off against rent, including, but not limited to, abatements, reductions or set-offs due or alleged to be due to, or by reason of, any claims of Sublessee against Sublessor. This Sublease shall not be affected by reason of any defect or alleged defect in or damage or alleged damage to or loss or destruction of any of the cars or for any other cause, it being the intention of the parties hereto that the rents and other amounts payable by Sublessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express pro-

visions of this Sublease.

13. Sublessee shall at all times during the continuance of this Sublease, at the expense of Sublessee, keep the cars insured against loss or damage, the risk of which is customarily insured against by railroad companies, in such manner and to such amount as is customarily insured by railroad companies.

14. Upon the expiration of this Sublease, Sublessee with reasonable promptness, and in any event within thirty (30) days thereafter, shall cause the car or cars then subject to this Sublease (in such groups as Sublessor may reasonably elect) to be transported to any point or points on the lines of railroad designated by Sublessor for the purpose, and there surrender the same to Sublessor, in as good order and repair as when delivered to Sublessee under this Sublease, ordinary wear and tear excepted.

15. If, during the continuance of this Sublease, one or more of the following events shall occur:

- (a) default shall be made in the payment of any part of the rental provided in Section 5 hereof and such default shall continue for thirty (30) days;
- (b) Sublessee shall make or permit any unauthorized assignment or transfer of this Sublease or of possession of any car or cars, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such car or cars within fifteen (15) days after written notice from Sublessor to Sublessee demanding such cancellation and recovery of

possession;

- (c) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Sublessee contained herein and such default shall continue for thirty (30) days after written notice from Sublessor specifying the default and demanding the same to be remedied; or
- (d) a decree or order by a court having jurisdiction in the premises shall have been entered
 - (i) adjudging Sublessee a bankrupt or insolvent, or
 - (ii) approving as properly filed a petition seeking reorganization of Sublessee under the Bankruptcy Act or any other State or Federal law relating to bankruptcy or insolvency, or
 - (iii) for the appointment of a receiver or liquidator or trustee in bankruptcy or insolvency of Sublessee or of its property or any substantial portion of its property, and within thirty (30) days thereafter (or in case, prior to the end of such thirty-day period, a temporary or permanent receiver or trustee shall have been appointed in such proceedings, then within thirty (30) days after Sublessor shall have demanded in writing that

such receiver or trustee take action to assume or reject this Sublease) the obligations of Sublessee under this Sublease shall not have been assumed by the receiver or trustee in such proceedings, pursuant to an order or decree of such court or otherwise, in such manner that they shall have been given a status comparable to that of those obligations incurred by a receiver or a trustee in bankruptcy or insolvency proceedings which cannot later be rejected by a plan of reorganization;

then, in any such case, Sublessor, at its option, may

- (1) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Sublessee of the applicable covenants of this Sublease or to recover damages for the breach thereof; or
- (2) by notice in writing to Sublessee terminate this Sublease, whereupon all rights of Sublessee to the use of the cars shall absolutely cease and determine as though this Sublease had never been made, but Sublessee shall remain liable as hereinafter provided; and thereupon Sublessor may by its agents enter upon the premises of Sublessee or other premises where any of the cars may be and take possession of the cars or any thereof and thenceforth hold, possess and enjoy the same free from any right

of Sublessee, or its successors or assigns, to use the cars for any purposes whatever; but Sublessor shall, nevertheless, be entitled to recover from Sublessee any and all amounts which under the terms of this Sublease may be then due or which may become due and unpaid, including rentals accruing hereunder after the date of default, for the use of the cars (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also may recover forthwith the entire remaining rental under this Sublease.

The remedies in this Sublease provided in favor of Sublessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Sublessee hereby waives any mandatory requirements of law, now or hereafter in effect which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. Sublessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make the rental payments regardless of any offset or claim which may be asserted by Sublessee or on its behalf in connection with the sublease of the cars, excepting, however, any such offset or claim arising out of action taken or suffered by Sublessor, or anyone claiming

through or under Sublessor, after the date of this Sublease.

Failure of Sublessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

16. Without the prior written consent of Sublessor and the Owner, Sublessee shall not (a) assign, transfer or encumber its subleasehold interest under this Sublease (except to the extent that the provisions of any mortgage now or hereafter created by Sublessee may subject such subleasehold to the lien thereof) or (b) loan, hypothecate or otherwise transfer or dispose of any of the cars.

17. All rights of Sublessor hereunder may be assigned, either in whole or in part, with or without notice to Sublessee, but subject to Sublessee's rights under this Sublease.

18. Anything to the contrary herein contained notwithstanding, any non-payment of rentals due hereunder, whether during the thirty (30) day period within which a default may be cured or for a longer period, and whether or not deemed a default or violation of this Sublease, shall result in the obligation on the part of Sublessee to pay also an amount equal to ten per cent (10%) per annum (or if such rate may not lawfully be charged then the highest rate which may lawfully be charged) of the overdue rentals for the period of time during which they are overdue.

19. Promptly after the execution and delivery of this Sublease, Sublessor shall at the expense of Sublessee cause this Sublease to be filed and recorded with the Interstate Commerce

Commission in accordance with Section 20c of the Interstate Commerce Act. Sublessee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or rerecord whenever required) any and all further instruments required by law or reasonably requested by Sublessor, for the purpose of proper protection, to the satisfaction of counsel for Sublessor, of its interest in the cars, or for the purpose of carrying out the intention of this Sublease. Sublessee will pay all costs, charges and expenses incident to the filing, refiling, registering, reregistering, recording and rerecording of any such instruments or incident to the taking of any such action.

20. All payments provided for in this Sublease shall be made in current funds at the place of payment, which shall be the place specified in the next paragraph hereof, unless Sublessor shall otherwise advise Sublessee in writing.

Any notice required or permitted to be given to Sublessor shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

Southern Pacific Transportation Company,
One Market Street,
San Francisco, California 94105.
Attention: Vice President and Treasurer.

Any notice required or permitted to be given to Sublessee shall be deemed to have been given when deposited in the United States mails, first-class postage prepaid, addressed as follows:

Evergreen Freight Car Corporation,
1255 Boylston Street,
Boston, Massachusetts 02215.
Attention: Senior Vice President
and Controller.

21. Sublessor covenants that Sublessee shall lawfully, peaceably and quietly hold, possess and enjoy the cars covered by this Sublease, without any hindrance, dispossession or interference by Sublessor or anyone lawfully claiming by, through or under Sublessor, except pursuant to the provisions of this Sublease.

Anything herein contained to the contrary notwithstanding, this Sublease and all rights of Sublessee hereunder, including the provisions of this Section 21, are hereby made expressly subject and subordinate in all respects to all rights and remedies of the Owner under the aforesaid Equipment Trust Agreement and any assignment or assignments thereof. Sublessee covenants and agrees that it will not take any action prohibited by said Equipment Trust Agreement and that it will take and perform all action (other than the payment of the rental and advance rental for the lease of the cars) required to be taken by Sublessor under said Equipment Trust Agreement. Sublessee shall furnish Sublessor on or before October 1 of each year while this Sublease of Railroad Equipment is in effect, commencing October 1, 1971, an annual statement of condition of the cars leased hereunder covering the preceding calendar year. Such statement of condition shall be prepared in the form prescribed in, and shall contain all of the information required by Section 4.07 of said Equipment Trust Agreement.

22. This Sublease may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such

original counterpart.

23. The terms of this Sublease and the rights and obligations of the parties hereunder may not be changed or terminated orally but only by an agreement in writing signed by the party against whom enforcement of such change or termination is sought.

IN WITNESS WHEREOF, Sublessor and Sublessee have duly executed this Sublease of Railroad Equipment, as of the date first above written.

SOUTHERN PACIFIC TRANSPORTATION COMPANY,
Sublessor.

By Robert J. McLean
Vice President and Treasurer

Attest:

EE Egan
Assistant Secretary

EVERGREEN FREIGHT CAR CORPORATION,
Sublessee.

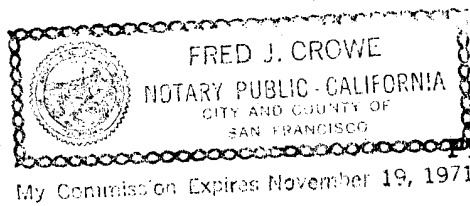
By W. L. Smith
President and Treasurer

Attest:

EE Egan
Assistant Secretary

STATE OF California)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

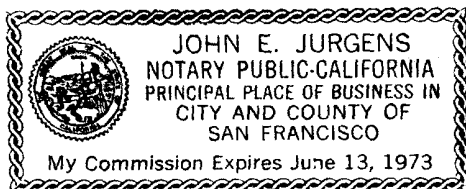
On this 23rd day of October, 1970, before me personally appeared ROBERT J. McLEAN, to me personally known, who being by me duly sworn, says that he is Vice President and Treasurer of SOUTHERN PACIFIC TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

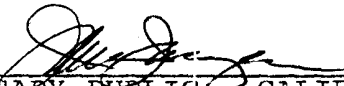


Fred J. Crowe
NOTARY PUBLIC - CALIFORNIA
Principal Place of Business in City
and County of San Francisco

STATE OF CALIFORNIA)
) ss.
CITY AND COUNTY OF SAN FRANCISCO)

On this 30th day of October, 1970, before me personally appeared J. N. CETINICH, to me personally known, who being by me duly sworn, says that he is President and Treasurer of EVERGREEN FREIGHT CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.




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